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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

Conservatorship of the Person and Estate of
SHEILAH DORCY.

FUND FOR NONVIOLENCE,
Petitioner and Appellant,

v.

SHEILAH DORCY,
Objector and Respondent.

A140929

(San Mateo County
Super. Ct. No. PRO099328)

Appellant Fund for Nonviolence (FNV) purports to appeal from an order made in *In re Conservatorship of the Person and Estate of Sheilah Dorcy*, denying FNV's petition seeking confidential reports concerning the conservatee. We dismiss the appeal.

BACKGROUND

Sheilah Dorcy (Sheilah)¹ is a woman of great wealth, with the briefing variously describing her estate from a low of \$12 million to a high of \$80 million. Sheilah has been under a conservatorship of her person and estate since 1995. Betsy Fairbanks (Fairbanks) was the first conservator, originally serving in both capacities. Fairbanks first met Sheilah in 1980 and, as FNV describes it, "For nearly a decade, long before Sheilah's disability and the establishment of the conservatorship in 1995, she and

¹ We use the first name Sheilah, the acronym FNV, and other shorthand names so as to be consistent with the briefing here and the papers below.

[Fairbanks] worked on Sheilah’s behalf, at her direction, to develop a ‘redistribution’ program to give away at least one-half of Sheilah’s annual income in order to support issues Sheilah believed in.” Thus, apparently, was formed FNV, of which Fairbanks is the president and chief executive officer.

As described in FNV’s opening brief, “FNV is a non-profit, public benefit corporation governed by Internal Revenue Code section 501, subdivision (c)(3). FNV was established by court order in 1997, to replace Eschaton Foundation as the beneficiary of Sheilah’s approximate \$80 million estate. As discussed in the various pleadings filed with the court, Sheilah had always felt uncomfortable with her inherited wealth, which she believed she had done nothing to deserve.”

The conservatorship has not proceeded smoothly, as manifest by the register of actions, which is 171 pages long. We do not have before us most of the history of the issues in the conservatorship, the record containing only the most recent disputes. But the briefs of the parties are not reluctant to refer to some of that history, briefs that, not surprisingly, are at odds in their descriptions of the various participants in the saga. Indeed, the lengthy briefing here—29 pages in FNV’s opening brief; 50 pages in Sheilah’s respondent’s brief; and 43 pages in FNV’s reply brief (not including the numerous pages in its “Reply Brief Appendix”)—devote inordinate space to the party’s version of various and sundry facts extraneous to what is involved here, disparagingly talking about one person or another, their motives, their conduct—and claimed misconduct. We will not enter that fray, but instead set forth the general background pertinent here, which is this:

In August 2008, Sheilah’s then-counsel filed a petition seeking the removal of Fairbanks in all her capacities, conservator of Sheilah’s person and estate, and trustee of her trust. The day before this filing, Sheilah’s attorneys filed an ex parte petition for an “Order Authorizing Conservatee to File All Pleadings and Documents Relating to or Discussing Sheilah Dorcy’s Health or Financial Condition in the Court’s Confidential File and Apart From the Public Record.” Judge Rosemary Pfeiffer granted the ex parte request, and ordered that “Petitioner is . . . permitted to file all pleadings and documents

relating to or discussing Sheilah Dorcy's health or financial condition confidentially with the Court, apart from the public record." The order further provided that such documents are to be kept confidential and not to be released without further order of the court. Indeed, Fairbanks herself had sought and received similar orders on several other occasions authorizing confidential filings.

Shortly after the filing seeking removal of Fairbanks, Sheilah's attorneys, in FNV's words, "removed themselves from the proceedings," after which the court appointed attorney Margaret Martin as independent counsel for Sheilah. At some point, Fairbanks resigned as conservator of the estate and as trustee of Sheilah's trust. Martin proposed William Chaddock to serve as temporary conservator of the estate, who was to review the accountings submitted by Fairbanks and the allegations in the petition for her removal.

On November 21, 2011, Chaddock filed "General Objections, Report of Special Trustee." Among other things, Chaddock challenged the relationship between FNV and Fairbanks, to the point of challenging FNV's very establishment. Chaddock also challenged charitable donations from Sheilah's trust to FNV, FNV's status as primary beneficiary of the trust, and FNV's internal operations. And interspersed throughout were numerous assertions as to Fairbanks's claimed conflict of interest.

We are unaware of all that developed thereafter, but apparently trial on the removal of Fairbanks from her remaining position (conservator of the person) and on the accounting issues was set for October 15, 2012. The parties engaged in a lengthy, multi-day mediation prior to that date, which was continued for more days of mediation in April 2012. That mediation resulted in a settlement, which was approved by the Honorable George A. Miram, an experienced probate judge—and the judge involved in the proceedings giving rise to the issue here. The settlement was entered as an order of the court on November 28, 2012.

On March 8, 2013, the conservatorship came before Judge Miram for a review hearing, prior to which Sheilah's independent counsel Martin submitted a confidential status report. Present at the hearing were Martin; Nancy Cronin, the conservator for the

estate and trustee of Sheilah’s trust, along with her counsel; and Fairbanks, who was still conservator of the person, and her counsel. Adopting the recommendations of Martin, among other things Judge Miram ordered Fairbanks, as conservator of the person, to “refrain from discussing or exposing the conservatee to any financial matters, . . . including issues involving FNV or any of the litigation settlement terms.” He further ordered Fairbanks “to take all reasonable steps to prevent members of her Fund for Nonviolence (FNV) staff, its officers or directors or any connected person from talking to Ms. Dorcy about any issue without the knowledge and participation of Independent Counsel.” Judge Miram’s order ended with this admonition: “Independent Counsel is to be kept fully informed of all developments.”

With a further review hearing set for June 10, 2013, independent counsel Martin filed another confidential report in advance of the hearing. At the hearing, the topic of compliance with the settlement agreement came up, which was apparently discussed in Martin’s June 4 report. Thus, the issue was continued so that FNV could be present and heard on that matter—which apparently led to the proceeding in issue here.

On August 30, FNV filed a “Petition to Require Access to Previously Filed Confidential Reports and Future Reports.” FNV noted that it had filed a request for special notice in July 2012, and complained that it had not received independent counsel’s March report and was not included in the preparation of the March 20, 2013 order following the review hearing. FNV contended that “[p]rohibiting FNV personnel from communicating with Sheilah Dorcy is a prior restraint” on speech, and argued that lack of notice of the contents of the March 2013 report violated its due process rights. In sum, FNV sought access to the March 4 and June 4 confidential reports filed by independent counsel, and “access to all confidential reports filed in this matter in the future and that the various parties serve a copy on FNV when they file their reports.”

Independent counsel Martin filed objections to FNV’s petition. She argued that as to the previously filed reports, FNV’s request was moot, and noted that the March 2013 order “was directed to Ms. Fairbanks, the conservator of the person, and not to FNV,” and because no order was entered against FNV, it had no due process claim. Martin’s

objections also contended that FNV had failed to show any legitimate reason it needed access to the past reports or “blanket access to all future confidential reports,” and argued that “[b]lanket disclosure of all confidential reports to the Fund for Nonviolence would be, in effect, disclosure of private and personal information to an as-yet unidentified and unnamed group of individuals—officers, directors, staff members at FNV—who do not have any personal right to know the conservatee’s business.”

Martin’s objections also chided Fairbanks for not filing an objection to FNV’s request: “Over the past five (5) years, Ms. Fairbanks, acting as conservator of the person, has repeatedly, and at times vehemently, asserted the conservatee’s right to privacy in all her affairs, both personal and financial. This is in accord with the general duties of a conservator of the person. Betsy Fairbanks is also president and Chief Executive Officer of FNV. . . . For FNV’s petition to access [Sheilah’s] confidential records, she has chosen to remain mute.”

Interestingly, after receiving Martin’s objections to FNV’s petition, Fairbanks filed her own objections “to FNV’s request for all confidential reports to the extent it would include the confidential report filed by Conservator.” Fairbanks noted that her confidential reports “routinely disclose[] matters concerning Ms. Dorcy’s health, medical emergencies, social issues, caregiving issues, and changes in cognition. . . . These matters have historically and routinely been kept confidential by a private court order. The request for the order derived as a result of Conservator’s desire to uphold Ms. Dorcy’s dignity and protect matters Ms. Dorcy considers private. Disseminating the information contained in the Conservator’s report to FNV is inappropriate. [¶] Ms. Dorcy would be greatly embarrassed to learn that information about her medical history and ongoing medical personal issues was being circulated to FNV or any other person who was not within the scope of those with a ‘need to know,’ although she is not even comfortable disclosing information that widely. . . .”

Following FNV’s reply, the matter came on for hearing on October 11, prior to which Judge Miram had issued a tentative ruling denying FNV’s petition. At the hearing Judge Miram expressed concern regarding the conflict between Fairbanks’ role as

conservator of the person versus her position as chief executive officer of FNV. Judge Miram reaffirmed his tentative ruling denying FNV’s petition requesting access to confidential reports, ruling that “[t]here is no cognizable basis to infringe on the conservatee’s privacy rights, and . . . FNV lacks standing on this issue.”

Judge Miram’s order was filed on November 21, and FNV filed notice of appeal from the order on February 3, 2014.

THE APPEAL MUST BE DISMISSED

The California Rules of Court state that the appellant’s opening brief must “state that the judgment appealed from is final, or explain why the order appealed from is appealable.” (Cal. Rules of Court, rule 8.204(a)(2)(B).) As the leading treatise puts it, “Appellant’s statement of appealability is *mandatory*. . . . ¶ **PRACTICE POINTER:** The purpose of this requirement is to focus the parties’ attention on the question of appealability and help weed out improper appeals from nonappealable orders before the court starts working on deciding the merits of the case. (*Good v. Miller* (2013) 214 [Cal.App.4th] 472, 476; *Lester v. Lennane* [(2000)] 84 [Cal.App.4th 536], 556; see also *Doran v. Magan* (1999) 76 [Cal.App.4th] 1287, 1296) ¶ As stressed in earlier Chapters, however, the matter of appealability is a fundamental *threshold* issue that should be fully considered at the *outset* of every appeal (long before the briefing stage). Postponing consideration of the matter risks the possibility of dismissal *after* incurring the expense and delay of record preparation and briefing.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2014) ¶¶ 9:86-9:87, pp. 9-29-9-30.)

It appears that FNV did not heed the advice.

This is FNV’s complete treatment of the subject in its opening brief: “II. STATEMENT OF APPEALABILITY ¶ On February 3, 2014, Appellants filed a notice of appeal from the order denying Appellant’s petition for access to confidential reports filed in the conservatorship proceeding. The order denying Appellant’s petition was a final adjudication and appeal is authorized under Probate Code section 1300, subdivision (c).”

In its second argument Sheilah’s respondent’s brief contends that FNV has appealed from a nonappealable order, which prompted a lengthy reply in FNV’s reply brief.

Though Sheilah did not move to dismiss the appeal, we do so on our own motion, as a matter of appellate jurisdiction, as we cannot entertain an appeal taken from a nonappealable order. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696; *Efron v. Kalmanovitz* (1960) 185 Cal.App.2d 149, 152; see *Farwell v. Sunset Mesa Property Owners Assn., Inc.* (2008) 163 Cal.App.4th 1545, 1550 [“question whether an order is appealable goes to the jurisdiction of an appellate court, which is not a matter of shades of grey but rather of black or white”].)

The appeal here is in a conservatorship proceeding governed by the Probate Code, the provisions of which exclusively set forth what is appealable. Put otherwise, no appeal will lie other than from the orders specified in the Probate Code. (*Conservatorship of Smith* (1970) 9 Cal.App.3d 324, 327–328 [conservatorship]; *Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125–1126 [probate]; *Guardianship of Kaylee J.* (1997) 55 Cal.App.4th 1425, 1429 [guardianship].) As *Estate of Stoddart* summed up: “ ‘[A]ppeals which may be taken from orders in probate proceedings are set forth in . . . the Probate Code, and its provisions are exclusive.’ [Citation.] ‘There is no right to appeal from any orders in probate except those specified in the Probate Code.’ [Citation.] ‘Appeals in general probate . . . matters are limited.’ [Citation.] ‘[I]f there was a free appeal in every probate matter, estates could be unreasonably delayed.’ ” (*Estate of Stoddart, supra*, 115 Cal.App.4th at pp. 1125–1126.)

Probate Code section 1301 expressly governs appeals in conservatorship proceedings, listing seven specific rulings that are appealable. None applies here, and FNV does not attempt to bring itself within section 1301. Rather, as noted, FNV asserts that section 1300, subdivision (c) governs its appeal. We disagree.

Probate Code section 1300, subdivision (c) provides that an appeal may be taken from an order “[a]uthorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.” That subsection does not apply here. FNV’s petition

sought no such order, but rather “Access to Previously Filed Confidential Reports” FNV’s petition ended with the prayer that “it be allowed access to Margaret Martin’s March 4, 2013 and June 4, 2013 reports”; and it “be allowed access to all confidential reports filed in this matter in the future.” In short, what the FNV sought was from the court, and the court’s file.

It is well settled that the appealability of a probate order is determined from its legal effect. (See *Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 755 and numerous cases there cited.) The effect of what FNV sought here was essentially the discovery of reports in the court’s file. It hardly needs citation of authority that rulings on discovery are not appealable. (*Datig v. Dove Books* (1999) 73 Cal.App.4th 964, 984 [order denying motion to compel discovery].)

The appeal is dismissed. Sheila shall recover her costs on appeal.

Richman, J.

We concur:

Kline, P.J.

Miller, J.